a state attorney-general from enforcing a state statute violating the Fourteenth Amendment, propounds this dilemma: if his action is not state action, the Fourteenth Amendment does not apply; while if it is state action, the Eleventh Amendment forbids the suit.[13] The following is submitted in answer. The issue between the parties is whether the threatened act of the defendant has legal sanction, which depends on whether or not this is state action. That in turn depends on the constitutionality of the act, which is a federal question giving the federal courts jurisdiction of the suit, and thus they may enjoin in accordance with equitable principles.

LIABILITY FOR RECEIVERSHIP EXPENSES. — It is within the discretion of the court to appoint a receiver, to determine his compensation, and to fix the manner in which that compensation shall be paid. The court through its receiver administers the estate for the benefit of those ultimately adjudged entitled to it. Receivership expenses, however, differ from ordinary costs in that the administration is supposed to be worth its cost to the true owner,[1] and accordingly the general rule is that the receivership expenses are to be taken from the fund administered.[2] The difficult problem is to determine when the facts justify such a departure from the general rule as to relieve the owner of the expenses of an involuntary management and place the burden on the party who instituted the proceedings. It may, indeed, be impossible to charge the fund because the possession of the receiver was never legal, as when his appointment was absolutely void because of a statute,[3] or when the property in question belongs to one not a party to the action.[4] In such case it is clear that the true owner cannot be forced to submit to a reduction of the fund to pay the expenses of the illegal administration. As the receiver is equally innocent, it seems equitable to charge the expenses to the person who caused the appointment of the receiver.[5] If, on the other hand, the appointment of the receiver under the circumstances was legal and proper, or, if erroneous, was acquiesced in by the defendant, the mere fact that the plaintiff eventually failed in his suit will not be enough to throw the expense on him.[6] If, however, the plaintiff was fraudulent, there can be no objection to making him stand the cost.[7] A more difficult class of cases is where the appointment was not justified on the facts presented and was vacated on appeal. The courts have reached all possible results on the liability for the receivership expenses incurred in the interim.[8] It is submitted that the proper rule is first to protect the receiver by giving him a lien on the fund and then to let the

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[13] 66 Cent. L. J. 71, 74, 75.

[1] See Porter *v.* Sabin, 149 U. S. 473, 479.

[2] Jaffray *v.* Raab, 72 Ia. 335.

[3] Couper *v.* Shirley, 75 Fed. 168.

[4] Howe *v.* Jones, 66 Ia. 156.

[5] Ephraim *v.* Pacific Bank, 129 Cal. 589.

[6] Ferguson *v.* Dent, 46 Fed. 88. But see City of St. Louis *v.* St. Louis Gas Light Co., 11 Mo. App. 237.

[7] Highley *v.* Deane, 168 Ill. 266.

[8] Receiver has no hold on the fund, Pittsfield Bank *v.* Bayne, 140 N. Y. 321; receiver has a lien on the fund, Espuela, etc., Co. *v.* Bindle, 11 Tex. Civ. App. 262; all expenses should be taxed against the plaintiff, Myres *v.* Frankenthal, 55 Ill. App. 390; running expenses should be taxed on the fund, but the receiver's commissions on the plaintiff, French *v.* Gifford, 31 Ia. 428.

defendant recover from the plaintiff any actual loss he may have suffered as a result of the receivership.[9]

A further question is presented when the funds prove insufficient to pay the receiver's expenses. Here, if the suit is not successful, as between the plaintiff and the receiver it seems equitable to make the plaintiff pay the expenses of the management of the property by the court. But if the plaintiff's claim is sustained, it takes extraordinary circumstances to justify charging him with the deficit. Thus, when by agreement certain money which would naturally have gone into the fund was paid directly to the plaintiff and the fund proved too small to cover the receivership expenses the plaintiff was rightly called on for the balance.[10] But in the ordinary case the plaintiff should not be held, since the receiver is not the agent of the plaintiff but of the court itself. Accordingly the Supreme Court of the United States recently held that a creditor who had a receiver appointed over a quasi-public corporation could not be charged with the expenses of managing the property. *Atlantic Trust Co.* v. *Chapman*, 208 U. S. 360.[11] To justify holding the plaintiff there must be special circumstances which change the equities of the situation, or the plaintiff must have assumed liability either by an agreement between the parties[12] or under terms required by the court as a condition precedent to the appointment of the receiver.

THE EFFECT ON AN INSURANCE POLICY OF THE EXECUTION OF THE INSURED FOR A CRIME. — Nearly eighty years ago it was decided in England that, even though a policy of life insurance contains no provision avoiding it for death at the hands of justice, it is against public policy to allow recovery when the insured has been executed for a crime.[1] This doctrine has been approved by text-writers,[2] and has been followed in recent years by the Supreme Court of the United States.[3] In fact it is first questioned in a recent Illinois decision which reaches the opposite conclusion.[4] *Collins* v. *Metropolitan Life Ins. Co.*, 83 N. E. 542. This decision rests solely on the ground that, since execution for felony no longer works corruption of the blood, there is no public policy against the descent of the felon's property. In allowing recovery the court assumes that even after the execution of the insured the policy is a valid chose in action, which is the very point in issue. It leaves unanswered the argument of all prior decisions that the provision for insurance against death at the hands of justice, included in the broad terms of the contract, is void as against public policy.

Where the insured commits suicide and the policy contains no suicide clause, the courts are almost unanimous in allowing beneficiaries to recover.[5]

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[9] Cutter *v.* Pollock, 7 N. Dak. 631; Mitter *v.* Brown, 58 W. Va. 237.

[10] Farmers' Nat'l Bank *v.* Backus, 74 Minn. 264. *Cf.* Welch *v.* Renshaw, 14 Colo. App. 526.

[11] Accord, Farmers', etc., Co. *v.* Oregon, etc., Co., 31 Ore. 237. But *cf.* Tome *v.* King, 64 Md. 166.

[12] Kelsey *v.* Sargent, 2 N. Y. St. Rep. 669.

[1] Amicable Ins. Co. *v.* Bolland, 4 Bligh (N. S.) 194.

[2] 1 May, Ins., 4 ed., § 326; Bliss, Life Ins., 2 ed., § 223.

[3] Burt *v.* Ins. Co., 187 U. S. 362 (denying recovery even though the insured was innocent of the crime for which he was executed). See 14 HARV. L. REV. 624; 16 *ibid.* 453.

[4] *Contra*, Collins *v.* Metropolitan Life Ins. Co., 27 Pa. Super. Ct. 353.

[5] Fitch *v.* Life Ins. Co., 59 N. Y. 557; Mills *v.* Rebstock, 29 Minn. 380; Morris *v.*